

E-FILED 5/19/08

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MICHAEL COOK,

NO. C 07-5085 RS

Plaintiff,

SCHEDULING ORDER

v.

SOCIAL SECURITY ADMINISTRATION

Defendant.

Plaintiff Michael Cook has filed at least four separate actions regarding his contention that he is entitled to recover certain Supplemental Social Security Income checks that allegedly were mailed to him but that he contends he never received or cashed.¹ To minimize any further

¹ Indeed, it appears that Cook may have filed several more actions regarding this matter that were dismissed by other judges. The four actions specifically identified herein all were assigned to this Court.

1 confusion, IT IS HEREBY ORDERED that all future pleadings, letters, motions, or other documents
2 pertaining to this same basic dispute shall be filed under *this* case number, C 07-5085 RS, and shall
3 not bear the case numbers of any of the related cases, nor be cross-filed in those cases. Cook is
4 further ordered *not* to file *any* new complaints regarding this same basic dispute.

5 On January 28, 2008, the Court issued an order dismissing Case Nos. C 07-06068 RS and
6 C 07-06232 RS on grounds that Cook had failed to exhaust his administrative remedies. That order
7 noted that a third case, C 06-05950 RS, had been dismissed previously, and was on appeal before the
8 Ninth Circuit.² In the January 28, 2008 order, however, the Court declined to dismiss *this* action
9 *sua sponte*, but noted that “dismissal without leave to amend on the same grounds as in [the other]
10 actions may ultimately be appropriate.”³

11 From materials Cook has submitted in this action or in the related actions or both, it now
12 appears that the Social Security Administration (“SSA”) has advised Cook that he will be entitled to
13 schedule a hearing before an administrative law judge (“ALJ”) “once [he] is released from
14 incarceration.” The record is not clear as to when Cook may expect to be released, but it is the
15 Court’s understanding that it may be several years from now.

16 Thus, it appears that the SSA may be taking the position that Cook cannot exhaust his
17 administrative remedies until he has had a hearing before an ALJ, but that he cannot have such a
18 hearing until he is released from incarceration, which may not happen for a substantial period of
19 time. In any event, this action is presently open and pending. Defendant has appeared, but has not
20 answered or moved to dismiss. Defendant shall file responsive pleadings within 20 days of the date
21 of this order. Again, Cook is directed that any future filings in this Court regarding this dispute

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23 ² On May 9, 2008, the Ninth Circuit issued an order requiring Cook to show cause within 21
24 days as to why that appeal should not be dismissed as premature, given that the same claims are still
pending in this action.

25 ³ The Court observed that no motion to dismiss had been filed. Defendant’s *reply* brief in
26 support of its motion to dismiss the other actions was filed in this action, but no actual motion to
27 dismiss was ever filed herein. The statement in the January 28, 2008 order that defendant had not
28 yet been served in this action appears to have been incorrect. Regardless of when service was made,
however, defendant has unquestionably now appeared in this action and has consented to the
jurisdiction of a magistrate judge.

1 should bear this case number and no other case number.

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3 IT IS SO ORDERED.

4 Dated: May 19, 2008


RICHARD SEEBORG
United States Magistrate Judge

1 **THIS IS TO CERTIFY THAT NOTICE OF THIS ORDER WAS ELECTRONICALLY**
2 **PROVIDED TO:**

3 James A. Scharf james.scharf@usdoj.gov, mimi.lam@usdoj.gov
4

5 **AND A COPY OF THIS ORDER WAS MAILED TO:**

6 Michael Cook
7 T-79529
8 Kern Valley State Prison
9 Post Office Box 5104
10 Dalano, CA 93216

11 Dated: May 19, 2008

12 /s/ BAK
13 Chambers of Magistrate Judge Richard Seeborg
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28 ORDER
C 07-06068 RS